3

4 5

6 7

8

9

10 11

12 13

14

15 16

17

18 19

20 21

23 24

22

26 27 28

29

30

25

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Michael Holland

Petitioner

VS

Tonto Forest Estates Homeowner's Association

Respondent

No. 23F-H039-REL

ORDER

Pending before the Office of Administrative Hearings is Respondent Tonto Forest Estates Homeowner's Association's Motion to Dismiss Complaint as a Matter of Law (Motion). Having reviewed the Motion and Petitioner's response, the Administrative Law Judge makes the following findings and conclusions:

In the Motion, Respondent argued that, pursuant to Arizona Revised Statutes Section 33-1804, the Board had the sole discretion to close portions of the board meeting and, as a result, prohibit the members in attendance from recording the closed portions of the board meeting. Notably, nothing in the Motion asserted that the Board, in fact, declared a portion of the board meeting to be closed pursuant to one of the exceptions under the statute at that time. The Motion tends to acknowledge that members in attendance were not allowed to record the portion of the board meeting that the Board now asserts was a closed session.

It was not clear from the record whether members of the association who were not board members were present at the "closed portion" of the board meeting. Additionally, it was not clear if Respondent was arguing in the Motion that members could attend a "closed portion" of a board meeting, but that the Board could prevent the recording of that portion of the board meeting.

The Administrative Law Judge finds that the petition in this matter raised a valid legal question of whether Respondent improperly prevented members in attendance at a board meeting from recording a portion of the meeting. As such,

IT IS ORDERED denying the Motion. The hearing remains scheduled to convene at 9:00 a.m. on May 25, 2023. Unless a party requests that the hearing be

1

conducted by telephone or videoconference, the hearing will convene in person at the Office of Administrative Hearings. Please visit the website at www.azoah.com for applicable procedures.

Done this day, March 28, 2023.

/s/ Tammy L. Eigenheer Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile to:

Susan Nicolson, Commissioner Arizona Department of Real Estate 100 N. 15th Avenue, Suite 201 Phoenix, Arizona 85007 Attn: SNicolson@azre.gov

AHansen@azre.gov vnunez@azre.gov djones@azre.gov labril@azre.gov

John A. Buric Warner Angle Hallam Jackson & Formanek PLC jburic@warnerangle.com

Michael Holland mholland@gmail.com

By: OAH Staff